

**DECISION**

THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-183972

DATE: APR 16 1976

60764

99057

MATTER OF: Claude C. Persinger - Real Estate Expenses -  
Loan origination and underwriter's fee

DIGEST: Disallowance of reimbursement for loan origination and underwriter's fee incurred by federal employee incident to purchase of residence upon transfer, is sustained. Both fees were "finance charges" within the definition of that term in section 106(a) of the Truth in Lending Act and thus are not reimbursable according to Federal Travel Regulations (FPMR 101-7) para. 2-6.2d (May 1973).

This action is in response to a request from an authorized certifying officer of the National Finance Center, United States Department of Agriculture, as to the propriety of certifying for payment a voucher in favor of Mr. Claude C. Persinger representing real estate expenses in connection with the purchase of a residence in January, 1975, in Slidell, Louisiana, upon transfer of station from Morgantown, West Virginia. The expenses include \$300 for an origination fee and \$12 for an underwriter's fee.

Authority to reimburse a Government employee for expenses incurred in connection with the purchase of a residence upon official transfer of station is found in section 5724a of title 5 of the United States Code (1970). Power to prescribe appropriate regulations implementing the above statute is given to the President. The President delegated his function under the statute to the Administrator of the General Services Administration (GSA) by Executive Order No. 11609, July 22, 1971. The governing regulations promulgated by the GSA are contained in chapter 2, part 6 of the Federal Travel Regulations (FPMR 101-7), May, 1973.

Federal Travel Regulations (FPMR 101-7) para. 2-6.2d (May, 1973) provides in pertinent part that:

"\* \* \* no fee, cost, charge or expense is reimburseable which is determined to be a part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System."

Section 106 of the Truth in Lending Act Title I, Pub. L. 90-321 provides the following guidelines for determining whether a particular charge is an excludable expense or a part of the finance charge:

"(a) Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit including any of the following types of charges which are applicable:

"(1) Interest, time price differential, and any amount payable under a point, discount, or other system of additional charges.

"(2) Service or carrying charge.

"(3) Loan fee, finder's fee, or similar charge.

"(4) Fee for an investigation or credit report.

"(5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss.

\* \* \* \* \*

"(e) The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

"(1) Fees or premiums for title examination, title insurance, or similar purposes.

"(2) Fees for preparation of a deed, settlement statement, or other documents.

"(3) Escrows for future payments of taxes and insurance.

"(4) Fees for notarizing deeds and other documents.

"(5) Appraisal fees.

"(6) Credit reports."

Regulation Z (12 C.F.R. Part 226), was promulgated by the Board of Governors of the Federal Reserve System pursuant to the Truth in Lending Act, and sets forth the foregoing in substantially the same form.

The loan origination fee claimed by Mr. Persinger related to the processing and handling of his loan and was computed as 1% of the loan. Such a fee which varies in total amount in direct proportion to the amount borrowed is more in the nature of a charge for the hire of money than reimbursement for administrative costs of processing the loan. As such, this fee may be described as a "loan fee" within the meaning of section 106(a)(3) of the Truth in Lending Act. See B-168674, March 11, 1974; B-177306, January 2, 1973. No exception for loan origination fees is contained in section 106(e) of the Act. Thus since the loan origination fee is a "finance charge" according to section 106 of the Truth in Lending Act and since the Federal Travel Regulations preclude reimbursement for such "finance charges," reimbursement is not allowed for the loan origination fee paid by Mr. Persinger.

The underwriter's fee claimed by Mr. Persinger was a fee charged by the financing entity to cover a fee charged by the Federal National Mortgage association for reviewing each loan which the financing entity sends to them. Clearly, the fee paid by the borrower constitutes a charge paid by him incident to and as a condition precedent to his obtaining a loan from the creditor. As such it is a charge incident to the extension of

B-183972

credit, within the meaning of section 106(a) of the Truth in Lending Act and thus is not reimbursable. See B-176775, October 25, 1972; B-177306, January 2, 1973.

Accordingly, the voucher may not be certified for payment.

R. P. Keller

Deputy Comptroller General  
of the United States